



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
Washington, D.C. 20231  
www.uspto.gov  
DW 01-02

Paper No. 3

DONALD W. MARGOLIS  
MARGOLIS AND ASSOCIATES  
3405 PENROSE PLACE, SUITE 105  
BOULDER, CO 80301

**COPY MAILED**

**FEB 14 2002**

**OFFICE OF PETITIONS**

In re Application of :  
Jackson et al. :  
Application No. 09/887,692 : DECISION GRANTING PETITION  
Filed: 18 June, 2001 :  
Attorney Docket No. P4136-DIV :

This is a decision on the petition filed on 27 December, 2001, requesting that the Continued Prosecution Application (CPA) filed on 18 June, 2001, and based on prior application No. 09/438,333 (issued as U.S. Patent No. 6,248,796 on 19 June, 2001) be treated as a continuation application under 37 CFR 1.53(b), rather than under 37 CFR 1.53(d), and be accorded a filing date of 18 June, 2001.

The petition **GRANTED**.

A review of the file of prior application No. 09/438,333 reveals that a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) based on prior application No. 09/438,333 was filed in the above-identified patent application on 18 June, 2001. The prior application, however, issued as U.S. Patent No. 6,248,796 on 19 June, 2001, as a result of applicant's payment of the issue fee on 12 April, 2001. Since the prior application has issued as a patent, the original application papers present in the file of Application No. 09/438,333 are no longer available for processing under 37 CFR 1.53(d).

In view of the decision and improper CPA request, the CPA request and other papers filed on 18 June, 2001, have been removed from the file of application No. 09/438,333 and have been assigned application No. 09/887,692 for identification purposes. The present petition has also been placed in the file of Application No. 09/887,692. All further correspondence concerning the


application deposited on 18 June, 2001, should be directed to Application No. 09/887,692, not Application No. 09/438,333.

The present petition requests that the CPA request be treated as an application under 37 CFR 1.53(b). A petition to accept and treat an improper application filed under 37 CFR 1.53(d) as a proper application under 37 CFR 1.53(b) must include: (1) the \$130.00 petition fee, and (2) a true copy of the complete nonprovisional application, as filed, designated as the prior nonprovisional application in the application papers filed under 37 CFR 1.53(d). The petition filed on 27 December, 2000, states that it is accompanied by a true copy of the specification, drawings, and declaration filed in the prior application.

As the two (2) month time limit as specified in the decision mailed on 19 July, 2001, is discretionary, the two (2) month time period for response is waived under the circumstances of this case.

The application file is being forwarded to Initial Patent Examination Division for further processing with a filing date of 18 June, 2001.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703)308-6918.

  
Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy